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COMMITTEE ON APPLICATIONS FOR REVIEW OF
ADMINISTRATIVE TRIBUNAL JUDGEMENTS
Forty-fifth session
Application Nos. 93, 94 and 95

ADMINISTRATIVE TRIBUNAL JUDGEMENTS NO. 666: VOROBIEV AGAINST THE SECRETARY-GENERAL OF THE UNITED NATIONS; NO. 672: BURTIS AGAINST THE SECRETARY-GENERAL OF THE UNITED NATIONS; NO. 687: CURE AGAINST THE SECRETARY-GENERAL OF THE UNITED NATIONS

Report of the Committee

Rapporteur: Ms. Elizabeth WILMSHURST (United Kingdom of Great Britain and Northern Ireland)

I. INTRODUCTION

1. At its forty-fifth session, the Committee on Applications for Review of Administrative Tribunal Judgements, established under article 11 of the statute of the Administrative Tribunal, considered the following applications:

(a) Application of Mr. Vorobiev for a review of Administrative Tribunal Judgement No. 666, Vorobiev v. the Secretary-General of the United Nations;

(b) Application of Ms. Burtis for a review of Administrative Tribunal Judgement No. 672, Burtis v. the Secretary-General of the United Nations;

(c) Application of Mr. Cure for a review of Administrative Tribunal Judgement No. 687, Cure v. the Secretary-General of the United Nations.

2. Meetings of the Committee were held on 13 and 14 July 1995.

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II. COMPOSITION OF THE COMMITTEE AND ORGANIZATION OF THE SESSION

3. The Committee, under paragraph 4 of article 11 of the statute of the Administrative Tribunal, is composed of the Member States, the representatives of which have served on the General Committee of the most recent regular session of the General Assembly (forty-ninth session), namely, at this time: Armenia, Austria, Belgium, Burundi, Cambodia, China, Côte d'Ivoire, Democratic People's Republic of Korea, Dominican Republic, Ecuador, Fiji, France, Ghana, Guinea-Bissau, India, Kazakstan, Malawi, Netherlands, Nicaragua, Pakistan, Russian Federation, Senegal, Sudan, Tunisia, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay.

4. Mr. George O. Lamptey (Ghana) and Ms. Elizabeth Wilmshurst (United Kingdom of Great Britain and Northern Ireland), elected respectively as Chairman and as Rapporteur at the forty-fourth session, continued to serve in those capacities at the forty-fifth session of the Committee, with the exception of the first meeting of that session, when, in the absence of the Chairman, the Rapporteur performed the functions of the latter in accordance with paragraph 2 of article XIII of the rules of procedure of the Committee.

III. APPLICATIONS BEFORE THE COMMITTEE AND THEIR CONSIDERATION

5. On 17 March 1995, the Committee received, through its Secretary, an application from Mr. Vorobiev, requesting a review of Judgement No. 666 rendered by the United Nations Administrative Tribunal on 4 November 1994 in the case of Vorobiev against the Secretary-General of the United Nations. In accordance with paragraph 1 of article III of the rules of procedure of the Committee, the application, which had been submitted in English, was translated into the other languages of the General Assembly. Thereafter, on 6 June 1995, in accordance with the same rules of procedure, the application was communicated in the form of a document (A/AC.86/R.272) to all members of the Committee, as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of the Judgement of the Administrative Tribunal (AT/DEC/666).

6. Written comments of the respondent, submitted with respect to the application of Mr. Vorobiev in accordance with paragraph 1 of article V of the rules of procedure of the Committee, were circulated to all members of the Committee in document A/AC.86/R.273.

7. The Committee considered the application of Mr. Vorobiev at its closed meeting held on 13 July 1995.

8. The Committee decided, without a vote, that there was not a substantial basis for the application of Mr. Vorobiev under article 11 of the statute of the Administrative Tribunal and therefore concluded that the International Court of Justice (ICJ) should not be requested to give an advisory opinion in respect of Judgement No. 666 delivered by the United Nations Administrative Tribunal in the case of Vorobiev against the Secretary-General of the United Nations.

9. On 6 April 1995, the Committee received, through its Secretary, an application from Ms. Burtis, requesting a review of Judgement No. 672 rendered by the United Nations Administrative Tribunal on 4 November 1994 in the case of Burtis against the Secretary-General of the United Nations. In accordance with paragraph 1 of article III of the rules of procedure of the Committee, the application, which had been submitted in English, was translated into the other languages of the General Assembly. Thereafter, on 6 June 1995, in accordance with the same rules of procedure, the application was communicated in the form of a document (A/AC.86/R.274) to all members of the Committee, as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of the Judgement of the Administrative Tribunal (AT/DEC/672).

10. Written comments of the respondent, submitted with respect to the application of Ms. Burtis in accordance with paragraph 1 of article V of the rules of procedure of the Committee, were circulated to all members of the Committee in document A/AC.86/R.275.

11. The Committee considered the application of Ms. Burtis at its closed meeting held on 13 July 1995.

12. The Committee decided, without a vote, that there was not a substantial basis for the application of Ms. Burtis under article 11 of the statute of the Administrative Tribunal and therefore concluded that ICJ should not be requested to give an advisory opinion in respect of Judgement No. 672 delivered by the United Nations Administrative Tribunal in the case of Burtis against the Secretary-General of the United Nations.

13. On 7 April 1995, the Committee received, through its Secretary, an application from Mr. Cure, requesting a review of Judgement No. 687 rendered by the United Nations Administrative Tribunal on 11 November 1994 in the case of Cure against the Secretary-General of the United Nations. In accordance with paragraph 1 of article III of the rules of procedure of the Committee, the application, which had been submitted in English, was translated into the other languages of the General Assembly. Thereafter, on 6 May 1995, in accordance with the same rules of procedure, the application was communicated in the form of a document (A/AC.86/R.276) to all members of the Committee, as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of the Judgement of the Administrative Tribunal (AT/DEC/687).

14. Written comments of the respondent, submitted with respect to the application of Mr. Cure in accordance with paragraph 1 of article V of the rules of procedure of the Committee, were circulated to all members of the Committee in document A/AC.86/R.277.

15. The Committee considered the application of Mr. Cure at its closed meeting held on 13 July 1995.

16. The Committee decided, without a vote, that there was not a substantial basis for the application of Mr. Cure under article 11 of the Statute of the Administrative Tribunal and therefore concluded that ICJ should not be requested to give an advisory opinion in respect of Judgement No. 687 delivered by the

United Nations Administrative Tribunal in the case of Cure against the Secretary-General of the United Nations.

17. In accordance with article VIII, paragraph 4, of the rules of procedure of the Committee, the decisions of the Committee with regard to the applications of Mr. Vorobiev, Ms. Burtis and Mr. Cure were formally announced by the Chairman at the meeting of the Committee held in public on 14 July 1995.

IV. CASE OF MR. CHHATWAL

18. On 10 April 1995 the Committee received, through its Secretary, an application from Mr. Chhatwal, requesting a review of Judgement No. 637 rendered by the United Nations Administrative Tribunal on 8 July 1994 in the case of Chhatwal against the Secretary-General of the United Nations. The application was attached to a letter addressed to the Secretary of the Committee, in which the applicant acknowledged that his application was submitted with a delay. On 21 April 1995, the Rapporteur of the Committee, who in accordance with the rules of procedure of the Committee in the absence of the Chairman performed the functions of the latter, addressed, in connection with the application of Mr. Chhatwal, a letter to all members of the Committee pursuant to paragraph 1 (d) of article II of the rules of procedure.

19. The letter contained the following information relating to the submission of the application by Mr. Chhatwal.

20. On 12 October 1994 Mr. Chhatwal informed the Executive Secretary of the Tribunal by facsimile that he would like to seek an advisory opinion under article 11 of the statute of the Tribunal. He further stated in the facsimile that a detailed application was being prepared and would be forwarded shortly. In a letter dated 14 October 1994, the Executive Secretary acknowledged receipt of the facsimile and noted that Mr. Chhatwal's facsimile had been transmitted to the Secretary of the Committee on Applications for Review of Administrative Tribunal Judgements, who would inform him of the procedure to be followed before that body. On 18 October 1994 the Secretary of the Committee sent to Mr. Chhatwal by cable detailed information regarding the requirements for the submission of an application to the Committee, which included citations of the relevant provisions of the Statute of the Tribunal and the rules of procedure of the Committee. In the concluding paragraph of the cable it was emphasized that, in the light of the provisions of paragraph 1 (b) of article II of the rules relating to the time requirement for the submission of applications, Mr. Chhatwal's application should be received by the Secretary of the Committee no later than 29 November 1994 and that under the rules of procedure of the Committee that deadline could not be extended. On the same day the Secretary of the Committee sent Mr. Chhatwal by registered mail copies of the rules of procedure of the Committee and the statute of the United Nations Administrative Tribunal.

21. At the end of the letter of the Acting Chairman, it was stated that, having reviewed the information relating to the submission of an application to the Committee by Mr. Chhatwal, the Acting Chairman had come to the conclusion that, under the relevant rules of procedure of the Committee, the application of

Mr. Chhatwal should be considered irreceivable because it had not been submitted within the time-limit set forth in paragraph 1 of article 11 of the Statute of the Tribunal. The members of the Committee were asked in the letter to inform the Acting Chairman by 5 May 1995 whether they had any opinion to the contrary. By 5 May 1995, no member of the Committee had raised any questions regarding the aforementioned determination. Therefore, on 9 May 1995, the Secretary of the Committee informed Mr. Chhatwal about the decision of the Committee on his application.

22. In a facsimile dated 3 June 1995 Mr. Chhatwal challenged the decision of the Committee in his case.

23. In accordance with article IV of the rules of procedure of the Committee, at the beginning of the forty-fifth session, the Chairman informed the Committee of the decision concerning the application of Mr. Chhatwal, which had been taken by written procedure prior to the session, pursuant to paragraph 1 (d) of article II of those rules. The attention of the Committee was also drawn to Mr. Chhatwal's facsimile dated 3 July 1995 challenging the above-mentioned decision.

24. The Committee examined the case of Mr. Chhatwal at its first and second closed meetings held on 13 and 14 July 1995.

25. Having reviewed all the relevant information regarding Mr. Chhatwal's case provided in accordance with article IV of the rules of procedure, the Committee agreed that there were no reasons to depart from the decision of the Committee regarding Mr. Chhatwal's application, which had been taken by written procedure prior to the forty-fifth session of the Committee in accordance with paragraph 1 (d) of article II of its rules and which stated that the application of Mr. Chhatwal should be considered irreceivable because it had not been submitted within the time-limit set forth in paragraph 1 of article 11 of the statute of the Tribunal.